



1996

Speech: Legal Issues and the Olympics

Ronald T. Rowan

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/mslj>



Part of the [Dispute Resolution and Arbitration Commons](#), and the [Entertainment, Arts, and Sports Law Commons](#)

Recommended Citation

Ronald T. Rowan, *Speech: Legal Issues and the Olympics*, 3 Jeffrey S. Moorad Sports L.J. 395 (1996).
Available at: <https://digitalcommons.law.villanova.edu/mslj/vol3/iss2/3>

This Symposium is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Jeffrey S. Moorad Sports Law Journal by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

SPEECH: LEGAL ISSUES AND THE OLYMPICS

RONALD T. ROWAN*

I. INTRODUCTION

The Olympic Movement, one of the most important and noble movements in the world, is one of the few ways to bring countries and people together peacefully. A lot of people find it hard to compare the Olympic Movement to what we do between countries, their people and the United Nations. Most of us in the Olympic Movement feel that we do a lot toward international relations and world peace.

During this presentation, I will discuss legal issues and the Olympics, and take you for a walk through the Olympic Movement nationally and internationally. I will focus, to a great degree, on the United States perspective in the Olympic Movement. If I were to try to make this presentation in a complete form, it would probably take a full six week course. What I am going to try to do is put the various pieces together for you and probably won't mention Tonya Harding¹ too many times, perhaps this is the only time until we get to questions.

* General Counsel and Director of Legal Affairs for the United States Olympic Committee. This speech was presented at the Association of American Law Schools 1996 Annual Meeting of the Section of Law and Sports in San Antonio, Texas on January 6, 1996.

1. Former United States Figure Skating Champion Tonya Harding pled guilty on March 15, 1994, to one felony count of conspiring to hinder prosecution in connection with the clubbing attack on rival figure skater Nancy Kerrigan. UPI, March 16, 1994, *available in* LEXIS, Nexis Library, UPI File. Kerrigan had been attacked on January 6, 1994, as she left the ice at a skating rink near Detroit, Michigan, following a practice session for the United States Figure Skating Championships. *Id.* Kerrigan was forced to withdraw from the competition because of an injury suffered during the attack. UPI, Jan. 13, 1994, *available in* LEXIS, Nexis Library, UPI File. In her absence, Harding won the championship and a place on the 1994 United States Winter Olympic Team that competed in Lillehammer, Norway. UPI, Jan. 14, 1994, *available in* LEXIS, Nexis Library, UPI File.

Harding took the United States Figure Skating Association to court in February, 1994, to try to stop the organization from holding a disciplinary hearing that could have kept her out of the Olympics. *Harding v. United States Figure Skating Ass'n*, 851 F. Supp. 1476 (D. Or. 1994). Harding's suit became moot when she resigned from the Association and pled guilty to criminal charges against her. *Id.* at 1481.

I will begin our walk with a brief discussion of the International Olympic Committee (IOC);² I will next discuss the evolution of the United States Olympic Committee (USOC),³ and in this context discuss the Amateur Sports Act (Act)⁴ and its impact on corporate sponsorships and other legal relationships relative to the Olympic Games.⁵ Toward the end of our journey I will discuss the dispute resolution process at the Olympics and conclude my presentation with a discussion regarding the International Council of Arbitration for Sport (ICAS).⁶ The ICAS has the potential to play a fairly sub-

2. The International Olympic Committee (IOC) is the governing body of the Olympic Games. JoAnne D. Spotts, *Global Politics and the Olympic Games: Separating the Two Oldest Games in History*, 13 DICK. J. INT'L L. 103, 106 (citing OLYMPIC CHARTER art. 11). The IOC is the "final authority on all questions concerning the Olympic Games and the Olympic Movement." *Id.* (quoting OLYMPIC CHARTER art. 23). Under the Olympic Charter the goals of the IOC are:

- to encourage the organization and the development of sport and sports competitions;
- to inspire and lead sport within the Olympic ideal, thereby promoting and strengthening friendship between the sportsmen of all countries;
- to ensure the regular celebration of the Olympic Games;
- to make the Olympic Games ever more worthy of their glorious history and of the high ideals which inspired their revival by Baron De Coubertin and his associates.

Id. at 108 n.38 (quoting OLYMPIC CHARTER art. 11).

3. The United States Olympic Committee (USOC) was originally chartered by Congress as an independent corporation on September 21, 1950. Edward E. Hollis III, *The United States Olympic Committee and the Suspension of Athletes: Reforming Grievance Procedures under the Amateur Sports Act of 1978*, 71 IND. L.J. 183, 186 (1995) (citing 64 Stat. 899 (1950)). As a National Olympic Committee (NOC), the USOC is the national representative of the IOC in the United States. Spotts, *supra* note 2, at 109. An NOC "is the sole authority responsible for the representation of its country at the Olympic Games, as well as other events held under the patronage of the IOC. . . ." Stephen A. Kaufman, *Issues in International Sports Arbitration*, 13 B.U. INT'L L.J. 527, 530-31 (1995) (quoting UNITED STATES OLYMPIC COMMITTEE, 1994 FACT BOOK 18 (1994)).

4. 36 U.S.C. §§ 371-382(b), 391-396 (1994). Under the Amateur Sports Act of 1978 Congress rechartered and formally incorporated the USOC. Hollis, *supra* note 3, at 186.

5. See 36 U.S.C. § 380 (1994). The Amateur Sports Act provides in pertinent part:

The [USOC] may authorize contributors and suppliers of goods or services to use the trade name of the [USOC] as well as any trademark, symbol, insignia, or emblem of the International Olympic Committee or of the [USOC] in advertising that the contributions, goods or, services were donated, supplied, or furnished to or for the use of, approved, selected, or used by the [USOC] or the United States Olympic or Pan-American team or team members.

36 U.S.C. § 380(b) (1994).

6. The International Council of Arbitration for Sport (ICAS) was created by an agreement between the IOC, the International Olympic Summer Sports Federations, the International Olympic Winter Sports Federations, and the Association of National Olympic Committees, on June 22, 1994, in Paris, France. Kaufman, *supra* note 3, at 532 & n.25 (citing Agreement Concerning the Constitution of the

stantial role in Atlanta this summer if there are any disputes. Certainly, the IOC hopes that the ICAS will play a role that keeps the IOC from being thrown into the federal courts in the United States. The ICAS dispute resolution process will be an interesting one and I will spend a few minutes on that.

II. THE INTERNATIONAL OLYMPIC COMMITTEE

The IOC was founded in 1894⁷ and recently celebrated its 100 year anniversary. The Olympic Games celebrate their 100th anniversary this year with the Centennial Games in Atlanta, Georgia this Summer.⁸ The IOC is an association formed and operating in Lausanne, Switzerland, under Swiss law.⁹ Its members are the 197 National Olympic Committees (NOCs) of the world. A major accomplishment was achieved when all 197 NOCs accepted the IOC invitation to compete at the Centennial Games in Atlanta.¹⁰ Thus, more NOCs than ever before in history will participate in Atlanta. Both Cuba and North Korea will participate.¹¹

International Council of Arbitration for Sport, June 22, 1994 [hereinafter *Paris Agreement*]). The purpose of the ICAS is to "facilitate the settlement of sports-related disputes through arbitration and to ensure the protection of the rights of the parties in the context of the arbitration of disputes connected with sport. To this end, the ICAS administration and financing of the [Court of Arbitration for Sport]." Kaufman, *supra* note 3, at 532 (quoting CODE OF SPORTS-RELATED ARBITRATION art. S2 (1993)).

7. Spotts, *supra* note 2, at 106 (citing JAMES A.R. NAFZIGER, 1 INTERNATIONAL SPORTS LAW 50 (1988)). The IOC was created by Baron Pierre De Courbetin and his associates at the Congress of Paris on June 23, 1894, at Paris University. *Id.*

8. The first modern Olympic Games were held in Athens, Greece in 1896. Spotts, *supra* note 2, at 107. The Athens Olympics saw participation in 10 sports by 300 athletes from 13 nations. *Id.* at 107 n.31 (citing NAFZIGER, *supra* note 7, at 19).

9. David B. Mack, Note, *Reynolds v. International Amateur Athletic Federation: The Need for an Independent Tribunal in International Athletic Disputes*, 10 CONN. J. INT'L L. 653, 657 (1995) (citing NAFZIGER, *supra* note 7, at 32). Under Swiss tax and labor statutes, the IOC enjoys special international status because of its "universal vocation in the world of sport." Mack, *supra* at 32 & n.13 (quoting NAFZIGER, *supra* note 7, at 33 (citing *Olympic Rev.*, Nov. 1981, at 641)).

10. All on board for first "universal Games," Reuters, July 19, 1996, available in LEXIS, Nexis Library, Reuters File. All members of the United Nations except for newly-independent Eritrea, are taking part in the Games. *Id.* The fledgling Eritrean Olympic Committee has not yet met the IOC's standards to be an officially recognized NOC. *Id.*

11. Kevin Sullivan, *In Olympic Community, N. Korea is the Odd Neighbor*, WASH. POST, July 8, 1996, at C1. In 1984, North Korea declined the invitation to the Los Angeles Olympics in response to the United States boycott of the Moscow Games in 1980. *Id.* North Korea also refused the invitation to the 1988 Olympic games held in its rival country, South Korea. *Id.* North Korea sent 24 athletes to Atlanta to participate in nine sports. *Id.* The 1996 Atlanta Games became the first Olympic Games in 100 years where every country that was invited did indeed attend. *Id.*

There are always many interesting questions about access to the country and coming to the Games when you deal with either North Korea or Cuba and when we deal with politics. These questions are heightened when the host country may not be on the best diplomatic terms with participating countries, as is the case in 1996 with the United States as the host country and North Korea and Cuba as participating countries.

In addition to the NOCs, the International Federations (IFs) are another very important organizational component of the IOC. The IFs administer the sports which are conducted both on the Olympic program and the various hemispheric programs, the inter-continental programs, and in general international competition. Most of the IFs are located in Europe; however, there are two IFs located in the United States and soon to be a third. The International Bowling Association is moving to the United States so the United States is beginning to play a greater role in the international community. The members of the IOC, the NOCs and the IFs operate under the Olympic Charter. This is basically the document that controls and authorizes, not only the activities of the NOCs within the movement and the IFs, but also the designations and the conduct of the Olympic Games.¹²

III. THE UNITED STATES OLYMPIC COMMITTEE

The USOC is a member of the IOC and until 1950, operated as an association that had no real legal status.¹³ It was an association until about 1950, although we acquired a not-for-profit status in the 1940s, and it was in 1950 that we became a Congressionally Chartered Corporation.¹⁴ By Act of Congress, we acquired our first corporate status in 1950, which gave us the authority to operate on behalf of the United States and the Olympic Movement and to field Olympic and Pan-American Teams.¹⁵ The statute also gave the

12. See Mack, *supra* note 9, at 654-55.

13. The USOC was formally organized in 1921 to replace the more informally organized American Olympic Committee, and received its first corporate charter in 1950. *San Francisco Arts & Athletics v. USOC*, 483 U.S. 522, 534 n.11 (1987).

14. 64 Stat. 899 (1950).

15. Sept. 21, 1950, ch. 975, title I, § 104. The current version of this provision states in pertinent part that the object and purpose of the USOC shall be to:

(3) exercise exclusive jurisdiction, either directly or through its constituent members of committees, over all matters pertaining to the participation of the United States in the Olympic Games and in the Pan-American Games, including the representation of the United States in such games, and over the organization of the Olympic Games and the Pan-American Games when held in the United States[.]

36 U.S.C. § 374(3) (1994).

USOC authority with regard to the Olympic symbols and marks, and that was the first creation, other than some trademark registrations, of our intellectual property rights over the Olympic symbols and marks.¹⁶ It was not utilized to any great degree until the late 1970s.

In 1978, the Amateur Sports Act, rechartered and in essence recreated the USOC, and basically gave us responsibility for the coordination of amateur sport in America.¹⁷ The Act also created a

16. Sept. 21, 1950, ch. 975, § 10, 64 Stat. 902 (1950). The current version of this provision states in pertinent part:

Without consent of the [USOC], any person who uses for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition —

(1) the symbol of the International Olympic Committee, consisting of 5 interlocking rings;

(2) the emblem of the [USOC], consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief;

(3) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic Committee or the [USOC]; or

(4) the words "Olympic", "Olympiad", "Citius Altius Fortius", or any combination or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with the [USOC] or any Olympic activity;

shall be subject to suit in a civil action by the [USOC]. . . .

36 U.S.C. § 380(a) (1994).

17. Under the Act, the objects and purposes of the USOC are to:

(1) establish national goals for amateur athletic activities and encourage the attainment of those goals;

(2) coordinate and develop amateur athletic activity in the United States directly relating to international amateur athletic competition, so as to foster productive working relationships among sports-related organizations;

(3) exercise exclusive jurisdiction over, either directly or through its constituent members of committees, over all matters pertaining to the participation of the United States in the Olympic Games and in the Pan-American Games when held in the United States;

(4) obtain for the United States, either directly or by delegation to the appropriate national governing body, the most competent amateur representation possible in each competition and event of the Olympic Games and of the Pan-American Games;

(5) promote and support amateur athletic activities involving the United States and foreign nations;

(6) promote and encourage physical fitness and public participation in amateur athletic activities;

(7) assist organizations and persons concerned with sports in the development of amateur athletic programs for amateur athletes;

(8) provide for the swift resolution of conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition;

structure that had not existed legally or even practically other than through elements of the Amateur Athletic Union (AAU) and National Collegiate Athletic Association (NCAA): the act established legal status for our National Governing Bodies (NGBs).¹⁸

In 1978, we restructured the USOC so that each sport on the Olympic or the Pan-American agenda would be represented by an NGB, a corporation which had to be a not-for-profit corporation. Today, we have forty or forty-one depending on who is in or out because we do remove a few out from time to time.

Some important sections of the Act create the duties and obligations of the NGBs, and set the requirements that have to be met in order for an NGB to be recognized by the USOC.¹⁹ The intellectual property portion of the 1950 Act was substantially restructured and Congress created what the courts have called an "anti-dilution statute" more than a true trademark statute.²⁰ The protection (and some trademark lawyers have a difficult time arguing with us when we talk about protection of Olympic symbols and marks because of the strength of the Act) is far beyond any trademark protection that can be identified for other major intellectual property rights holders.

(9) foster the development of amateur athletic facilities for use by amateur athletes and assist in making existing amateur athletic facilities available for use by amateur athletes;

(10) provide and coordinate technical information on physical training, equipment design, coaching, and performance analysis;

(11) encourage and support research, development, and dissemination of information in the areas of sports medicine and sports safety;

(12) encourage and provide assistance to amateur athletic activities for women;

(13) encourage and provide assistance to amateur athletic programs and competition for handicapped individuals, including, where feasible, the expansion of opportunities for meaningful participation by handicapped individuals in programs of athletic competition for able-bodied individuals; and

(14) encourage and provide assistance to amateur athletes of racial and ethnic minorities for the purpose of eliciting the participation of such minorities in amateur athletic activities in which they are underrepresented.

36 U.S.C. § 374 (1994).

18. The Act provides, in pertinent part, that, "For any sport which is included on the program of the Olympic Games or the Pan-American Games, the [USOC] is authorized to recognize as a national governing body an amateur sports organization which files an application and is eligible for such recognition" 36 U.S.C. § 391(a) (1994).

19. Section 392 deals with the duties of the NGBs. 36 U.S.C. § 392. Section 391(b) lists the substantial requirements an amateur sports organization must satisfy to be recognized by the USOC as an NGB. 36 U.S.C. § 391(b) (1994).

20. 36 U.S.C. § 380(a) (1994). For the text of this "anti-dilution" provision, see *supra* note 16.

What happened with the intellectual property part of the Act is that we accepted the IOC charge in its Charter to create federal laws protecting the symbols and marks of the Olympic Movement. Thus, the United States is the strongest nation in the world with respect to Olympic trademark and name protection. Therefore, that has led to a very strong development of sponsor, licensing and television opportunities that are really the backbone of the Olympic Movement. What was created is a commercial relationship that is often criticized in books and articles, but which on the other hand is exactly what allows the Olympic Movement to flourish.

Another very important element of the Act was the obligation placed on the USOC and the NGBs to provide dispute resolution mechanisms for athletes with respect to their opportunity to compete.²¹ The USOC had dispute resolution processes before 1978, but it is interesting to note that a good part of the world does not have a dispute resolution process at all. One of the things that I would like to discuss toward the end of this presentation is the fact that athletes in other parts of the world do not have the opportunities for dispute resolution that we have in the United States. Perhaps this might come as a surprise to some of you, but even among many of the common law countries dispute resolution processes do not exist.

One of the other elements of the Act that is very important, which most other countries do not have, is that federal law gives the USOC the authority over the Olympic Games when they are conducted in the United States.²² That is not just the fielding of the Olympic and the Pan-American Teams when the Games are held in the United States, but actually authority over the organization of the Games.²³ You can understand that such statutory grant of au-

21. 36 U.S.C. § 375(a)(5) (1994). Under this section the USOC has the power and duty to:

facilitate, through orderly and effective administrative procedures, the resolution of conflicts or disputes which involve any of its members and any amateur athlete, coach, trainer, manager, administrator, official, national governing body, or amateur sports organization and which arise in connection with their eligibility for and participation in the Olympic Games, the Pan-American world championship competition, or other protected competition as defined in the constitution and bylaws of the Corporation

Id.

22. 36 U.S.C. § 374(3) (1994). The Act provides that one of the purposes of the USOC is to "exercise exclusive jurisdiction . . . over the organization of the Olympic Games and the Pan-American Games when held in the United States" *Id.*

23. *Id.*

thority might cause a conflict between the USOC and our parent, the IOC. However, I think that the commercial aspects have made the IOC understand that the law has its benefits. Fortunately, when the Olympic Games are held in the United States, we have been able to work with the IOC for the most part through a series of contracts and agreements regarding authority for the Games. By the year 2002, the United States will have hosted more Olympic Games within a short period of time than all but very few of the European countries. We have been very fortunate since 1980 to have had the Olympic Games in Lake Placid, Los Angeles, Atlanta and, in 2002, we will host them in Salt Lake City, which is very unique in the world of Olympic Games.

Let me talk a little bit about the Olympic Games and the elements of the Games so that we can put those in perspective with some of the things that the USOC will be involved in and the dispute resolution process. The IOC Charter provides the basic elements for the Games, for bidding and conducting the Games, and it speaks in terms of the Olympiad. The Olympiad is a four year period during which today, as opposed to four years ago, the Olympic Games are conducted both in Summer and Winter periods every two years. Previously, as you may remember, the Summer and Winter Games were conducted in the same year; that has now been changed so that the Summer Games are conducted in what is called the first year of the Olympiad. The year 1996 is the first year of the Olympiad, and then the Winter Games will be conducted two years after that.

The IOC Charter designates the length of time for the Games, sixteen days, and it designates the method for achieving the selection of the Olympic Games.²⁴ It is a fairly complicated process and one that really protects the IOC from any loss, and in essence from any responsibility for the conduct of the Games. We begin our attempt to secure the Olympic Games by bidding. In order to bid a country must have a single bid from its NOC. In the United States, where there is great interest in conducting or bidding for the Olympic Games, we "conduct" a mini-bid to begin with (assuming that we even want to put a bid out). The last time that we had a major attempt to secure the Summer Games, which was for Atlanta 1996, we actually started with five cities, ultimately ending up with Atlanta as our bid. In order to present that bid to the IOC, it was necessary that the NOC support that bid, that an organizing committee be formed that had legal entity in the area of Atlanta, and

24. Spotts, *supra* note 2, at 107 & n.34 (citing OLYMPIC CHARTER art. 4).

that the City of Atlanta support and agree to underwrite the expenses relative to the Games. In the past, meeting these requirements was not viewed as such a problem, but today the budget for the Olympic Games in Atlanta is \$1.7 billion. That is a very substantial amount of money, a good part of it coming from television revenue and a good part of it coming from sponsor revenues and licensing.

This scenario is different, for instance, from Seoul, South Korea in 1988, when most of the money came from government donation and government support, which is the case in many of the other countries of the world. Most bids from other countries are supported by substantial federal government dollars. The undertaking is required to be submitted to the IOC and the IOC votes to determine who the host city will be. This was the process through which we got to Atlanta for 1996, and Salt Lake City for the Winter Games in 2002.

In the case of the 1996 Summer Games, the bidding process did not initially support Atlanta. The voting process, which requires eliminating the "lowest vote city," ultimately brought Atlanta to the position where it was able to secure the largest number of votes. Salt Lake City, on the other hand, had been attempting to secure the Games for over 16 years and the first vote supported them for the 2002 Games. This was one of the few times other than the 1984 Los Angeles Games where something like that happened. In the Los Angeles case, no one else chose to bid for the Games.

I want to mention just a few special elements of securing the Games that are interesting. In order to secure the bid one must agree that a contract will be signed on the day that the bid is received. I am not sure how many of us believe that such a procedure is the right way to enter into a contract, since you do not do a lot of negotiating when you have to sign on the day of the bid, but the IOC has the power and that is how it solves its legal problems. I think you would agree that this is a fairly interesting tactic used by the IOC under the Olympic Charter.

Another interesting element is that the bid has to be guaranteed through the leader of the bidding country, for example the President of the United States, assuring free access to and from the country during the course of the Games. This element also involves understanding and making adjustments to or accommodations for the ordinary process involving the grant or denial of visas and passports. The governmental agreement to assure free access to and from the country during the course of the Games is not necessarily

always followed because many countries will still require that the athletes obtain the visas or passports through normal, albeit, expedited procedures. The United States allows athletes to enter the United States for the Olympic Games with an Olympic identity card which is received when the athlete leaves his or her home country. That is an obligation that is guaranteed by the President of the United States.

I mentioned earlier that the organizing committee is required to be a legal entity within the host country. Basically on the day that the organizing committee receives the bid, the organizing committee, the NOC, and the host city, all agree that they will assume all legal responsibility and all financial responsibility for putting on the Games and the IOC is held harmless.

At this time I would like to spend a few minutes discussing our sponsors' involvement with the Olympic Games. Sponsors have become the single most important element of the Olympic Games from the standpoint of financial support.²⁵ Until about 1976, sponsor involvement really was not that important. However, in 1976 through a series of sponsor packages, the IOC realized that this was an important element, and that was also about the time that licensed properties started becoming fairly significant with respect to sport. Pins, t-shirts and items of that nature which before had been the paraphernalia of the Games became a very important financial element of the Games. Since about 1976 sponsor licensing has been a very substantial part of financing the Games. Sponsor licensing has grown to a fairly detailed and sophisticated method today because in order to secure what today is a \$40 million package for a single sponsor, that sponsor is going to want a great deal in return for that \$40 million. Sponsors receive a great deal from the United States because of the protection afforded by the intellectual property provisions of section 380 of the federal law under the Amateur Sports Act of 1978.²⁶ Sponsors have exclusive opportunities to promote and be associated with the Olympic Movement not only based on a contract that they sign with the IOC, the USOC, and the organizing committee, but also because of the strength of the Act.

I might mention at this point that there are only a few countries in the world—and you probably can name them better than I can—that have strong intellectual property protection like we do.

25. For a discussion of the impact of sponsors on financial support of the Olympic Games, see Robert N. Davis, *Ambushing the Olympic Games*, 3 VILL. SPORTS & ENT. L.J., 423 (1996).

26. For the text of section 380(a), see *supra* note 16.

Canada has a statute in this area but it is not as strong. Great Britain recently approved a bill this past year that is modelled after ours; Australia has a very strong act and Japan has a strong act. Those are about the extent of the countries that really have any significant protection for the intellectual properties of the Olympic rings, symbols and terminology. This kind of trademark protection is the underpinning of the ability to strike these very large sponsor relationships that guarantee exclusivity in the United States, and for certain sponsors, throughout the world. Coca-Cola is an example of a major corporate sponsor which was able to strike a contract with the IOC and the NOCs of the world to be the exclusive product for the Olympic Games and for the Olympic Team of a particular country, throughout the world, as it wishes, as long as it was willing to pay for such exclusive rights. In the United States, Coca-Cola is also able to secure a sponsor relationship with our National Governing Bodies and with Teams which are fielded outside of the Olympic Team connection.

In order to administer the sponsor and licensing relationships in the United States, the USOC and the organizing committee for the Games, the Atlanta Organizing Committee for the Olympic Games (ACOG), created a joint venture. Therefore, we have another entity that I have not mentioned and which normally would not exist relative to the conduct of the Games in the United States. This entity, the Atlanta Committee for Olympic Properties (ACOP), was created solely to operate as a bridge between the USOC and ACOG to sell the sponsor and the licensing relationships, provide the benefits, and provide the protection through this venture relationship.²⁷ We are currently creating a similar process with a little different make-up for the Salt Lake City Games in 2002.

Television is a fairly basic underpinning of the Games as far as financial support is concerned, but there is only one main player in the world and that is the United States. The United States television support is substantially greater than the combined value of all other television ranks throughout the world for the Olympic Games. That particular package is why you have seen the long term agreement signed this past month running through the year 2006. I can assure you that it is very, very unusual that a television network would commit to such a long-term connection with a sporting

27. See generally, Athelia Knight, *As Games Approach, Sponsors Are All Business; Competition is Heated Among Advertisers*, WASH. POST, Oct. 19, 1995, at B8 (stating ACOG and USOC have joined to create separate entity called Atlanta Committee for Olympic Properties (ACOP) which is responsible for sponsors and licensing of Olympic merchandise).

event, especially if you look back at the history of the Olympic Games and consider boycotts by important sporting nations. However, with the news as I mentioned this morning of North Korea, and for that matter Cuba, and basically the entire world now participating in the Olympic Games, it is probably a very good buy.²⁸

IV. DISPUTE RESOLUTION

Moving to the topic of athlete participation in the Games which may lead to dispute resolution, there are basically two players in the selection of the athletes for the Olympic Games. The IOC provides the basic rule for eligibility for the Olympic Games and that rule is passed on to the IFs. The NOC is the second player that selects its Team to enter into the Games.

The process for team selection in the United States is quite different from the rest of the world. While other parts of the world do have what they call National Federations, as opposed to National Governing Bodies, which administer certain of their sports, most of the real control of the athletes and the selection of the athletes for the Olympic Games is done directly by the NOC.

On the other hand, in the United States, the NGBs are separate from the USOC and are given the responsibility of providing to the USOC the athletes for the various Teams, according to guidelines that the USOC establishes which hopefully create an opportunity for as objective a selection process as is possible. This is true, for the most part, in individual sports, but it is not quite as true, of course, for team sports because there is a great deal of subjectivity involved, including a coach's discretion and how the athletes mix with each other at various positions (not who scores the most points but who is the best point guard to be able to move the ball with the team).

I make this point because when we get into dispute resolution this is one of the areas where we run into problems: the issue of "subjectivity" versus "objectivity." Much of the rest of the world is, to a great degree, subjective in the selection of their team and may pick whomever they wish whether it is the best athlete or not.

In the United States, on the other hand, most of the selection procedures are geared to selecting the best athlete. Of course, there is always another athlete that is "just about the best" and that is where we get into the dispute resolution.

28. See *supra* note 10 and accompanying text.

There is one other “kick” which is that the IFs have begun to create fairly substantial qualifying requirements that are going to be a problem by the year 2000. The problem is that many qualifying requirements may limit the ability in some sports for a country to enter a team or an athlete. One example might be speed skating: if one is required to be in the top thirty-two of the world and required to have skated “x” time over 500 meters, you are required to have skated a specific time. Not only does the skater have to be in the top thirty-two, but he or she has to have skated a specific time in order to be able to be entered which means that, conceivably, only twenty people are entered in the Olympic Games. Obviously, this is a substantial problem for many countries. It is a problem to the United States which has great athletes, but in some sports, we are not as good as others. We are generally committed to fielding a team in every event and yet the IFs are creating qualifying requirements that prevent us from being able to enter athletes in every event. To be fair about the qualifying requirement, one of the reasons for the qualifying requirement is the fact that there are so many athletes and so many countries now wanting to enter the Games and the ability to be able to have an Olympic Village, to have the venues, to have the support systems necessary to put on the Games is obviously geared to the number of athletes that you are able to support. So the limitations, the qualifiers, are being triggered to the needs of the location and the ability to put on the Games from a number of standpoints.²⁹

International qualifying under USOC requirements for the NGBs are established through what we call our Games Preparation Committee and then through trials. In many sports, trials are held, such as track and field, where the top three athletes in the 100 yard dash are entered. That is how we select much of our team and that’s how we become involved in athlete disputes.

The Act said that the USOC must create a dispute resolution process, with some of the elements already in place, and then the USOC was to create the other elements.³⁰ The following are elements relating to dispute resolution. The NGBs are required to

29. One such qualifier is the issue of security associated with the Olympic Games. See *Atlanta Games under heavy guard*, RALEIGH NEWS & OBSERVER, June 30, 1996, at C12. According to published reports, the United States government anticipated spending an estimated \$227 million on Olympic security covering approximately 30,000 police officers, private security guards and military personnel in and around Atlanta. *Id.*

30. 36 U.S.C. § 375(a)(5) (1994). For the text of this dispute resolution provision, see *supra* note 21.

have a hearing process that provides the opportunity for the athlete to complain if he or she has been denied the opportunity to compete on an Olympic, Pan-American or International Team (protected competition). The USOC is also required to have a dispute resolution process, referred to as Article IX of the USOC Constitution and Bylaws. If an athlete is not satisfied with the resolution of his or her dispute with an NGB, he or she has the right and the opportunity to go to the USOC and cause the Executive Director to investigate the matter and attempt to resolve it. Unfortunately, that process does not give full authority to the USOC. What it does is provide a sort of a mediation process. If a resolution is not found, then the final element of the dispute resolution process is required by the federal law and by our Constitution.

The final opportunity of the athlete to submit his or her complaint is to the American Arbitration Association (AAA) for final and binding arbitration and this is a very interesting process. Because of the boycott in 1980, the USOC had nothing to resolve, so initially there were no complaints. The Act was passed in 1978 but it did not become very well known to the sport community until after 1980. It was not until the real interest in the 1984 Games in Los Angeles and the desire of athletes to participate on their home territory that the arbitration process was implemented. Therefore, in 1983 and 1984 there were substantial complaints filed with the USOC which led to a series of athletes being added to the Team, being denied the opportunity to be on the Team, and it even created some fairly nightmarish counter awards from arbitrators.

In one case, we had three different athletes competing for the same position in the sport of sailing and we had three different awards from three different arbitrators in three different locations in the United States. This scenario led us to attempt to enter one of them and the IOC said "you guys are crazy, why don't you just enter whomever you want, why do you follow these crazy rules." The IOC also said "we are not going to let you enter anybody, you go solve your problems." That led to a fairly interesting resolution process where all parties, the NGB, the athletes, and the USOC were forced into a final arbitration. We had four arbitrations over a single athlete position on a sailing team in 1984. That experience along with a few statistics made us realize that we had a lot of work to do with this entire process.

The largest part of the work had to do with the hearing process within the NGBs system and the selection procedures within the USOC Games Preparation area. I told you that today we are work-

ing more towards an objective decision making process in trying to select Team members, but in the 1980s subjectivity was probably more the norm in the selection procedures. The selection procedure recreated the methodology, and therefore the arbitrations and complaints for the 1988 Seoul Games went down substantially. In the 1992 Summer Games in Barcelona, complaints went way down and at this particular point, we probably only have a few probable complaints for the opportunity to compete in the 1996 Summer Games in Atlanta. I say that very carefully because as sure as I say that we will have twenty-seven complaints filed in May.

This is one of the problems with the selection procedure and the dispute resolution process. Most sports like to wait until right before we have to certify the Team to the Olympic Games, based on the belief that is when the athletes are best prepared. The NGBs want to have their trials or their competitions to select the Team as close to the Olympic Games as possible, but then if we have a dispute over a position, it is very, very difficult to resolve it. It is complicated for the AAA to provide the proper dispute mechanism; however, there is a forty-eight hour provision. The AAA has provided, upon demand, a substantial number of arbitrations within forty-eight hours of the complaint. We have spent quite a bit of time in the past year with the AAA addressing many of the issues that have developed over these arbitrations and we are now in the process of adopting a series of procedures for administration of Olympic Games related arbitrations.

In the past and under the law, we are required to follow the commercial rules of arbitration. The commercial rules of arbitration do not cover all needs with respect to Olympic Team participation and the disputes that would be involved. We have modified these procedures and one of the key elements of this modification is the problem of "the other athlete." If an athlete complains that he or she has been denied the opportunity to compete on the Olympic Team, the complaining athlete may not be the number one athlete. Who are they? The complaining athlete may be ranked as far down as number twelve. If an athlete complains and if he or she wins, the person who was the number one athlete is out. The problem that had existed in the past, (as arbitration is a matter between the parties) is that arbitrators had not been willing to agree that the athlete that was going to be "out" needed to be heard and involved in the process. This is one of the most important changes in the procedures. The arbitrators will be required to determine who the other athletes are. Also, the parties will be re-

quired to identify to the arbitrators who the other athletes might be and we have a similar obligation.

Between the NGB, the complaining athlete, the USOC, and the arbitrator, all of the people that are involved in the loss or gain of a final position will be considered in the review process. A very significant change in the entire procedure regarding the parties involved in the arbitration is being considered.

A few statistics so you can see how the process is working and what kinds of cases we deal with have been included as follows. Since 1983, we have had 109 complaints filed by athletes claiming that they have been denied the opportunity to make either the Olympic or the Pan-American Team. In the process the USOC has attempted to resolve a dispute but we did not have the authority to actually say "you" or "you" win. We have resolved sixty-two of those cases. Therefore, sixty-two cases did not go to arbitration, and of those sixty-two, approximately half were resolved in favor of the athlete that filed a complaint. Of the forty-three cases which have gone to arbitration, twenty-three have been decided in favor of the complaining athlete. Obviously, we have created through the law and our own mechanisms a process that is very protective of the athletes' opportunities. This takes us to a discussion of dispute resolution in the international community because that is where the real problems are.

The IFs come from a mind set that does not necessarily provide the opportunity for people, and particularly athletes, to be heard. An athlete can complain in the United States or an athlete can be banned in the United States and they will have "due process." However, if an IF decides that an athlete should be disqualified, should not be eligible to compete, or should be banned, what process do they have? Quite frankly, in many of the IFs, not much. You may get a two minute opportunity to be heard in London, and then you will retire and the IF will go behind closed doors to make its decision and you may have flown to London and brought witnesses but you may not get into the meeting room.

This lack of fair process is especially troublesome with regard to the current problems relative to steroids because the IFs have authority over doping, just as NGBs in the United States have authority. If an athlete tests positive for a substance and the IF does not believe that it is appropriate to disqualify the athlete, the IF can do whatever it wants because it has the ultimate authority over the eligibility of the athlete. The IF will conduct its process, whatever that is. If the athlete had a legitimate excuse, and I am not saying

that there are many nor am I saying that all positives should result in penalties, but the issue is, do they have the opportunity to be heard and have due process before they are disqualified? The answer is, for much of the world, no.

V. THE INTERNATIONAL COURT OF ARBITRATION FOR SPORT

Given the lack of a consistently fair international dispute resolution process, the International Court of Arbitration for Sport (ICAS) becomes critical. This is the final area that I would like to talk about. I think the ICAS is extremely important in the Olympic Movement, in international sport activities and in the entire area of providing reasonable process for athletes before something is taken away that they have worked so hard for their whole life.

The IOC has created a new, independent arbitration tribunal located in Switzerland called the ICAS and it has several elements to it.³¹ The ICAS provides a hearing opportunity if there has been some kind of a denial to an athlete of the opportunity to compete. The ICAS will provide a *de novo* opportunity for a new hearing after the initial hearing and an appeal process can be provided as well. If an athlete has been denied the opportunity to compete by an IF, all but two of the IFs in the world have agreed to submit these issues to the arbitration tribunal. If the athlete chooses, he or she may simply appeal the decision through the hearing process. On the other hand, if the athlete felt that the process of the IF was lacking, the athlete could request a hearing *de novo*. Moreover, if the athlete did not really get a hearing at all, but was simply suspended, the athlete could request a hearing within the ICAS process.

In addition, a short term arbitration process that is geared strictly around the Games in Atlanta has been created and an arbitration tribunal will be available for all disputes relating to participation in the Atlanta Games. The USOC and ACOG have created a consent process for all IFs, NOCs and athletes whereby each agrees to submit to the arbitration process. The IOC changed its Charter to require as a condition of competing in the Games that these disputes be resolved according to the ICAS process. This is very interesting because, as a condition of participation in the Games, the host country has to agree to abide by the IOC Charter.

31. For a discussion of the creation of the ICAS, see *supra* note 6.

VI. CONCLUSION

I would like to close by saying that in the statistics that I have provided, it is very interesting to note that while in 1984 almost all of the complaints and the dispute resolution problems centered around selection procedures — whether this athlete or that athlete should be a member of the Team — approximately 60% of our complaints and our dispute resolution problems now generally are doping related. Thus, because of the complexity of the issues, questions are raised regarding chain of custody and the analysis procedures in a laboratory. Given the extreme scrutiny in the arbitration process, this is really complicating the arbitration approach regarding what documents need to be provided, what witnesses need to be provided, and how you approach it.

Add one more element which is the use of testosterone³² and several rules that have changed over the last year regarding what levels of testosterone indicate with respect to whether an athlete tests positive or not and you have some complicated issues to deal with in arbitration.

This completes my summary of legal issues relating to the USOC and I appreciate the opportunity to be here. Thank you very much.

32. Andy Miller and Karen Rosen, *Steroids Still Fuels Win-At-Any-Cost Attitude*, ST. LOUIS POST-DISPATCH, May 19, 1996 at F3. Steroids are derivatives of the natural male hormone testosterone which increase lean muscle mass and strength when used in conjunction with training. The use of testosterone and its derivatives are difficult to confirm in drug testing of athletes because testosterone already occurs naturally in the body. *Id.*